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Australian Government

Department of the Prime Minister and Cabinet

GUIDANCE ON CARETAKER CONVENTIONS

DEPARTMENT OF THE PRIME MINISTER AND CABINET

2010

Note: This document is identical in most respects to the Guidance that was issued in August 2007.

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1. INTRODUCTION

1.1 Successive governments have accepted that, during the period preceding an election for the House of Representatives, the government assumes a 'caretaker role'. This practice recognises that, with the dissolution of the House, the Executive cannot be held accountable for its decisions in the normal manner, and that every general election carries the possibility of a change of government.

1.2 The caretaker period begins at the time the House of Representatives is dissolved and continues until the election result is clear or, if there is a change of government, until the new government is appointed.

1.3 During the caretaker period, the business of government continues and ordinary matters of administration still need to be addressed. However, successive governments have followed a series of practices, known as the 'caretaker conventions', which aim to ensure that their actions do not bind an incoming government and limit its freedom of action. In summary, the conventions are that the government avoids:

- making major policy decisions that are likely to commit an incoming government;
- making significant appointments; and
- entering major contracts or undertakings.

1.4 There are also established practices associated with the caretaker conventions that are directed at protecting the apolitical nature of the public service and avoiding the use of Commonwealth resources in a manner to advantage a particular party. The conventions and practices also aim to prevent controversies about the role of the public service distracting attention from the substantive issues in the election campaign.

1.5 The conventions and practices have developed primarily in the context of the relationship between Ministers* and their departments (and, by extension since the commencement of the *Public Service Act 1999*, executive agencies). The relationship between Ministers and other bodies, such as statutory authorities and government companies, varies from body to body. However, those bodies should observe the conventions and practices unless to do so would conflict with their legal obligations or compelling organisational requirements.

1.6 The following notes are intended to explain the conventions and practices in more detail and to provide guidance for the handling of business during the caretaker period. The conventions are neither legally binding nor hard and fast rules. Their application in individual cases requires judgment and common sense. The Department of the Prime Minister and Cabinet (PM&C) is able to provide information and advice to agencies, but responsibility for observing the conventions ultimately rests with agency heads or, in cases where they are involved, with the Prime Minister and Ministers.

1.7 To ensure the consistent application of caretaker guidance within agencies and to minimise the number of requests for advice to PM&C, agencies should appoint one or two senior officers to be the initial contact for caretaker enquiries. If further advice is required in

* All references to Ministers should be read as including Assistant Ministers and Parliamentary Secretaries.

relation to particular issues that arise during the caretaker period, departments and agencies should contact the Government Division in PM&C on (02) 6271 5399.

2. MAJOR POLICY DECISIONS

2.1 Governments avoid making major policy decisions during the caretaker period that are likely to commit an incoming government. Whether a particular policy decision qualifies as 'major' is a matter for judgment. Relevant considerations include not only the significance of the decision in terms of policy and resources, but also whether the decision is a matter of contention between the Government and Opposition in the election campaign.

2.2 The conventions apply to the making of decisions, not to their announcement. Accordingly, the conventions are not infringed where decisions made before dissolution are announced during the caretaker period. However, where possible, decisions should be announced ahead of dissolution if their announcement is likely to cause controversy which would distract attention from the substantive issues in the campaign. Care should be taken to ensure that Commonwealth resources are not used to make announcements that involve partisan activities.

2.3 The conventions do not apply to promises on future policies that the party in government announces as part of its election campaign.

2.4 If circumstances require the Government to make a major policy decision during the caretaker period that would bind an incoming government, the Minister would usually consult the Opposition spokesperson beforehand. In the past, for example, the Government has agreed to provide urgent financial assistance to drought-affected areas following consultation with the Opposition.

3. SIGNIFICANT APPOINTMENTS

3.1 Governments defer making significant appointments during the caretaker period. When considering the advice it would give on whether an appointment qualifies as 'significant', the agency should consider not only the importance of the position, but also whether the proposed appointment would be likely to be controversial.

3.2 If deferring the appointment is impracticable, usually for reasons associated with the proper functioning of an agency, there are several options:

- the Minister could make an acting appointment where permissible;
- the Minister could make a short term appointment until shortly after the end of the caretaker period; or
- if those options are not practicable, the Minister could consult the relevant Opposition spokesperson regarding a full term appointment.

4. MAJOR CONTRACTS OR UNDERTAKINGS

4.1 Governments avoid entering major contracts or undertakings during the caretaker period. When considering whether a contract or undertaking qualifies as 'major', agencies should consider the dollar value of the commitment and also whether the commitment involves a routine matter of administration or rather implements or entrenches a policy, program or administrative structure which is politically contentious. A further consideration is whether the commitment requires ministerial approval.

4.2 If it is not possible to defer the commitment until after the caretaker period, for legal, commercial or other reasons, there are a number of options. The Minister could consult the relevant Opposition spokesperson regarding the commitment. Agencies could also explain the implications of the election to the contractor and ensure that contracts include clauses providing for termination in the event of an incoming government not wishing to proceed. Similarly, in the case of tenders, agencies should warn potential tenderers about the implications of the election and the possibility that the tender might not be completed.

5. INTERNATIONAL NEGOTIATIONS AND VISITS

5.1 The convention that the Government avoids entering major commitments during the caretaker period gives rise to particular issues in the context of international negotiations. The Government ordinarily seeks to defer such negotiations or adopts observer status until the end of the caretaker period. The other parties to the negotiations, however, may not be familiar with the concept of caretaker conventions and the Government may need to explain the constraints they impose.

5.2 If deferring involvement or adopting observer status is not feasible, the Government could limit its role to providing information on its past position, without committing the incoming government to that position. If it is necessary for the Government to participate fully in the negotiations, it should advise the other parties to the negotiations that any outcomes will need to be authorised by the incoming government, or it could seek the Opposition's agreement to negotiating positions.

5.3 The Prime Minister will, if necessary, determine whether visits by foreign dignitaries involving government hospitality should proceed during the caretaker period. In any case, dignitaries whose visits are scheduled for the caretaker period or shortly afterwards should be advised of the election announcement and any changes in arrangements, including the reduced availability of Ministers and the possibility of a change of government.

6. AVOIDING APS INVOLVEMENT IN ELECTION ACTIVITIES

6.1 Advertising and Information Campaigns

6.1.1 The Department of Finance and Deregulation and PM&C reviews all advertising campaigns at the beginning of the caretaker period and recommends whether those campaigns should continue or be deferred. Bipartisan agreement is sought for campaigns that are to continue. Campaigns that highlight the role of particular Ministers or address issues

that are a matter of contention between the parties are normally discontinued. Campaigns that are of an operational nature, such as defence force recruiting campaigns or public health campaigns, usually continue.

6.1.2 At the beginning of the caretaker period, individual agencies should review arrangements for the distribution of printed material, including newsletters. Agencies should avoid active distribution of material during the caretaker period if it promotes Government policies or emphasises the achievements of the Government or a Minister. Passive distribution of material, such as continued placement in the agency's offices or distribution in response to requests, is acceptable.

6.1.3 Agencies should also be aware that the conduct of information campaigns during the election period is regulated by legislation. Section 42 and Schedule 2 of the *Broadcasting Services Act 1992* deal with radio and television broadcasts and section 328 of the *Commonwealth Electoral Act 1901* deals with printed material. In broad terms, the legislation requires any advertisement or literature which is actively distributed and contains material likely to affect voting to identify the person who authorised the material and, in the case of printed matter, the name and address of the printer.

6.2 Internet and Electronic Communications

6.2.1 The Australian Government Information Management Office (AGIMO) provides guidance on the content and maintenance of agency and ministerial websites. The guidance is available at http://webpublishing.agimo.gov.au/Ministerial_Websites. Agencies are expected to ensure that the websites they maintain take account of that guidance at all times.

6.2.2 During the caretaker period, agencies also need to take additional steps, which are outlined below, to ensure that agency resources are not used to support any particular political party. While they do not need to withdraw their IT services, such as email accounts, to Ministers' offices, agencies should review their websites at the beginning of the caretaker period.

6.2.3 **Agency websites** may retain material placed on the website before the commencement of the caretaker period in most cases. Exceptions might be recent ministerial statements that criticise the Opposition in strong terms. Agencies should check the wording of any icons and links on their websites to ensure that they cannot be interpreted as promoting a Government policy. Agencies should add only the following material to their websites during the caretaker period:

- portfolio-related announcements, if that is the usual practice (the definition of portfolio-related will require judgment within each agency, but, as examples, election promises should not be placed on an agency website, but a ministerial press release relating to a public health warning might appropriately be added);
- purely factual material, including costings prepared and published under the *Charter of Budget Honesty Act 1998*; and
- information on existing policies and programs, unless the information includes attacks on the Opposition or other political material.

6.2.4 If agency websites contain links to websites outside the gov.au domain, agencies should consider the need for entry/exit messages. (See 6.2.7 below)

6.2.5 In the case of **ministerial websites**, agencies may continue to maintain or fund the maintenance of the website during the caretaker period if that was the practice prior to the caretaker period. Material placed on the Minister's website before the caretaker period may be retained, as may links between the Minister's and agency's websites. In relation to the addition of material:

- agencies should add to ministerial websites only material relating to matters of existing policy or purely factual material. Agencies should not add material concerning future policies, election commitments, how-to-vote material or media releases and speeches that criticise opponents, promote the Government or pursue election issues;
- agencies may also wish to place a notice on the ministerial website noting that election-related material is not available on the website. The notice could refer visitors to the Government party's website, or include a link to that website;
- if the maintenance of the website has become the responsibility of the Minister rather than the agency, ministerial staff may add any material to the website as long as there is no cost to the Commonwealth **and** a notice is added to the effect that since the commencement of the caretaker period the website is neither the responsibility of nor a cost to the agency.

6.2.6 As a general rule during the caretaker period, ministerial media releases and alerts should be placed on the website of the relevant political party. Where Ministers determine a need to issue media releases and alerts through agency-maintained/funded websites in their own name, these should be restricted to administrative or operational information of high public interest and of a time-sensitive nature. (These might include, for example, health warnings, travel advisories, military operations or counter terrorism alerts.)

6.2.7 If the Minister's website is personal and not maintained by the agency, the Minister might consider placing a disclaimer on the website to the effect that no Commonwealth resources are being used to communicate political material.

6.2.8 If an agency-maintained/funded ministerial website contains **links** to websites outside the gov.au domain, such as political party websites, agencies should give particular attention to the need to include appropriate entry/exit messages. Such messages could be along the lines of: "You are now leaving the website of [X]. The website you are entering is not maintained or funded by the Commonwealth of Australia."

6.2.9 The interactive functions of websites within the gov.au domain such as discussion groups, chat rooms or blogs which allow unmoderated comment or debate should be moderated during the caretaker period. Words along the following lines might be appropriate: "In the period preceding an election for the House of Representatives, the Australian Government assumes a caretaker role. It is important during that time that Australian Government resources are not used to communicate political material. As this website is hosted by the [Department of ...], the site will be moderated from the time the House of Representatives is dissolved until after the election to ensure that political material is not placed on the site."

6.2.10 **Electronic bulletin boards and e-mail systems** provided by agencies should not be used to publish political material. Material from political parties and how-to-vote material, whether produced by a union, a church or any other organisation should not be displayed.

APS employees should also refer to *APS Values and Code of Conduct in Practice: A guide to official conduct for APS employees and Agency Heads* regarding the display of political material. The guide is available on the Australian Public Service Commission's website at <http://www.apsc.gov.au/values/conductguidelines.htm>.

6.3 Use of Agency Premises

6.3.1 There may be occasions where agency premises can appropriately be used during the caretaker period by political parties for public events, such as media conferences, or where they are the obvious place for a function (for example, the opening of a building by a Minister). In the case of official functions involving the use of agency resources, it would generally be appropriate for the Opposition spokesperson, member or candidate to be given the opportunity to be present. Where candidates, other than the Prime Minister or Ministers, seek to visit premises or facilities, agencies should as far as possible be even-handed in their responses and assistance to Government and Opposition.

6.3.2 While there should be no difficulty with the responsible use, by all parties campaigning in an election, of agency premises that are normally open to the public, it is most important during an election campaign that public servants not become caught up with party political activity. For that reason, it is not appropriate that use of premises extend to such activities as engaging public servants in political dialogue or using public servants for logistical support for political functions. Nor, of course, should use of premises unreasonably disrupt the normal operations of the offices concerned.

6.3.3 Ministerial visits to agencies for consultations would, of course, be in order for the conduct of routine government business, in accordance with the caretaker conventions.

6.4 Political Participation by Officers

6.4.1 The APS values in the *Public Service Act 1999* state that the "APS is apolitical, performing its functions in an impartial and professional manner". The Code of Conduct requires APS employees to "disclose and take reasonable steps to avoid conflicts of interests (real or apparent)..." and "use Commonwealth resources in a proper manner". The Code is available on the Australian Public Service Commission's website at <http://www.apsc.gov.au/conduct/index.html>.

6.4.2 Officials should therefore not use agency resources or their positions to support particular issues or parties during the election campaign. *APS Values and Code of Conduct in Practice: A guide to official conduct for APS employees and Agency Heads*, especially the sections on 'Participating in Political Activities' and 'Using Commonwealth Resources', provide further guidance. In particular, the guide covers the wearing or displaying of political material in official premises. The guide is available on the Australian Public Service Commission's website at <http://www.apsc.gov.au/values/conductguidelines.htm>.

6.4.3 Officials need to exercise judgment if they are scheduled to speak at public functions during the caretaker period. In the case of controversial issues, officials should decline invitations to speak. In the case of non-controversial issues, officials may speak, but should explain that the Government is in caretaker mode and that they will limit their statements to factual issues and matters of administration. Officials should avoid publicly explaining or promoting policies during the caretaker period.

6.5 Requests from Ministers' Offices for Information

6.5.1 Ministers may continue to request factual material from agencies during the caretaker period and material relating to the day-to-day business of government is supplied to Ministers in the usual way. The purpose to which such material is put is for Ministers to determine. However, to avoid controversy in the election period about claimed breaches of the apolitical and impartial values of the APS, it may be appropriate to decline a request for assistance if it required the use of significant resources and was clearly for use in the election campaign. If in doubt, agencies should discuss with the Minister or his/her senior staff the purpose for which the material is to be used.

6.5.2 In most instances, agencies should also decline requests for policy advice during the caretaker period. There might, however, be urgent domestic or international issues on which policy advice should clearly be provided to Ministers to allow responsible ongoing administration or to protect Australia's interests. Requests for legal advice on issues affecting the Minister in his or her capacity as a candidate should be declined.

6.5.3 Agencies can proceed with policy development work during the caretaker period so that they are in a position to provide advice to the incoming government, provided that contact with Ministers' offices is not required.

6.6 Charter of Budget Honesty and Other Policy Costings

6.6.1 Particular issues arise in relation to policy costings during the caretaker period. The costing of Government and Opposition election commitments by the Treasury and the Department of Finance and Deregulation (Finance) is regulated by the *Charter of Budget Honesty Act 1998* (the Act). The Secretaries of the Treasury and Finance issue guidelines under the Act before, or at the beginning of, the caretaker period. The guidelines are available at http://www.finance.gov.au/publications/charter_of_budget_honesty.html.

6.6.2 The Act provides for the Secretaries of the Treasury and Finance to prepare costings of publicly announced Government and Opposition election commitments during the caretaker period. The Act does not apply to:

- costings outside the caretaker period;
- costings by agencies other than Treasury or Finance during the caretaker period. Ministers can request costing information from other agencies in accordance with longstanding practice. Where necessary, those agencies may seek advice from Treasury and Finance on strictly factual issues and costing methodology, but Treasury and Finance in providing such factual advice will not thereby be endorsing or confirming costings. Any such costings must not be presented as costings under the Charter of Budget Honesty; and
- costing of minor party and independents' commitments during the caretaker period. Ministers can request any agency, including Treasury and Finance, to provide costing information in relation to these commitments. Any requests to Treasury and Finance should go through the offices of the Treasurer and the Minister for Finance and Deregulation.

6.7 Departmental Liaison Officers

6.7.1 Particular issues also arise in relation to Departmental Liaison Officers (DLOs). DLOs are provided by agencies to assist Ministers' offices with necessary liaison work with agencies, and the need for that work should be reviewed at the commencement of the caretaker period. If there is ongoing work of a liaison nature during the caretaker period, DLOs may remain with Ministers' offices. However, DLOs are APS employees rather than *Members of Parliament (Staff) Act 1984* employees. They should therefore avoid assisting Ministers in ways that could create a perception that they are being used for party political purposes.

7. RELATED MATTERS

7.1 Tabling of and Responses to Reports

7.1.1 Responses to outstanding parliamentary committee reports should be taken up with the incoming government. Agencies may, however, undertake appropriate preparatory work and consultation at the agency level so that they are in a position to provide early advice to the incoming government.

7.1.2 Reports of an administrative nature, such as annual reports, can be tabled out of session. However, where a report contains information that is likely to be controversial, consideration should be given to whether tabling should be deferred until after the caretaker period.

7.2 Financial Entitlements

7.2.1 During the caretaker period, **agency provision of entitlements** for Ministers and their staff should be assessed on a case-by-case basis. Agencies should not cover claims relating to the election campaign or a political event, as these costs are to be borne by the respective political party. Examples of claims that would not be covered include requests for additional laptop computers or mobile telephones for Ministers or their staff unless there was a demonstrable official purpose.

7.2.2 Claims relating to the management of essential government business can be covered by agencies; for example, to support Ministers attending an urgent Cabinet meeting or primarily in connection with their ministerial duties.

7.2.3 In the case of claims that cover a combination of government and political business, agencies can grant a partial reimbursement to cover government activities.

7.2.4 In relation to entitlements funded by the Department of Finance and Deregulation, guidelines on entitlements for Ministers and Parliamentary Secretaries are produced by the Ministerial and Parliamentary Services Group in that Department.

7.2.5 It has been a longstanding convention that Ministers do not claim travelling allowance from the day of the Prime Minister's campaign launch to the day after polling day. The only exceptions are where Ministers travel for urgent Cabinet meetings or primarily in connection with their ministerial duties.

7.3 Legislation

7.3.1 Bills that have passed both Houses of Parliament should be assented to by the Governor-General before the dissolution of the House of Representatives. There is at least one instance – involving a Bill passed in the 1930s – where a Bill received assent after dissolution. However, questions have been raised about the constitutional validity of Acts that receive assent in the period between dissolution and the opening of the new Parliament.

7.3.2 Legislation can be proclaimed during the caretaker period but, other than in exceptional circumstances, proclamations which have a commencement date after the date of the election are not made.

7.3.3 The Executive Council usually meets immediately before the dissolution to approve regulations and ordinances, including those made under Acts just assented to. Where there is no infringement of the basic caretaker conventions, the Executive Council may approve regulations and ordinances during the caretaker period. However, meetings are infrequent during the caretaker period and are held only when required by the amount of business.

7.4 Cabinet Documents

7.4.1 Successive governments have accepted the convention that Ministers do not seek access to documents recording the deliberations of Ministers in previous governments. Cabinet documents, in particular, are considered confidential to the government that created them. In this context, all Cabinet documents, including files, Submissions, Memoranda, Business Lists, Minutes (decisions) and under-the-line items should be returned to the custody of the Cabinet Liaison Officer in the Parliamentary Business Section, or equivalent, in each agency, for storage until the result of the election is known. The Cabinet Liaison Officer should advise the Cabinet Secretariat in PM&C when they have accounted for all documents and ensured they are securely stored.

7.4.2 The Cabinet Secretariat may issue further procedural guidelines on the handling of Cabinet documents before or at the commencement of the caretaker period. The Cabinet Secretariat is the appropriate contact for further advice on such matters. Advice on the security and handling of Cabinet documents is at paragraphs 136 to 182 of the Cabinet Handbook available at <http://www.pmc.gov.au/parliamentary/index.cfm>.

7.5 Pre-election Consultation with the Opposition

7.5.1 In 1976, the Government tabled Guidelines providing for pre-election consultation with the Opposition. The Guidelines are intended to ensure a smooth transition if an election results in a change of government. The current version of the Guidelines was presented to the Senate on 5 June 1987 and is re-printed below.

7.5.2 The Guidelines are distinct from the caretaker conventions and commence on a different date. They apply as soon as an election for the House of Representatives is announced or three months before the expiry of the House of Representatives, whichever occurs first.

7.5.3 The Guidelines are as follows:

- (i) The pre-election period is to date from three months prior to the expiry of the House of Representatives or the date of announcement of the House of Representatives election, whichever date comes first. It does not apply in respect of Senate elections only.
- (ii) Under the special arrangement, Shadow Ministers may be given approval to have discussions with appropriate officials of Government departments. Party Leaders may have other Members of Parliament or their staff members present. A Departmental Secretary may have other officials present.
- (iii) The procedure will be initiated by the relevant Opposition spokesperson making a request of the Minister concerned who is to notify the Prime Minister of the request and whether it has been agreed.
- (iv) The discussions will be at the initiative of the non-Government parties, not officials. Officials will inform their Ministers when the discussions are taking place.
- (v) Officials will not be authorised to discuss Government policies or to give opinions on matters of a party political nature. The subject matter of the discussions would relate to the machinery of government and administration. The discussions may include the administrative and technical practicalities and procedures involved in implementation of policies proposed by the non-Government parties. If the Opposition representatives raised matters which, in the judgment of the officials, sought information on Government policies or sought expressions of opinion on alternative policies, the officials would suggest that the matter be raised with the Minister.
- (vi) The detailed substance of the discussions will be confidential but Ministers will be entitled to seek from officials general information on whether the discussions kept within the agreed purposes.

8. INTERNAL AGENCY MATTERS

8.1 Correspondence

8.1.1 The arrangements for handling correspondence during the caretaker period are a matter for individual agencies. In PM&C, the practice is to answer general correspondence during the caretaker period rather than leave it to accumulate. However, Ministers usually sign only the necessary minimum of correspondence during the caretaker period and some correspondence is prepared for signature by ministerial staff or departmental officers instead.

8.1.2 When preparing replies, care should be taken to protect the public service from perceptions of partisanship. Replies should not assume that the Government will or will not be returned to office. References to post-election action are in terms of the 'incoming government'. Correspondence that requires an explanation of Government policy should not commit the Government to post-election action or imply that the policy will continue if the Government is re-elected. Within PM&C it has not been considered sufficient to state only that the matter is one for the incoming government, although a reply might include these words to avoid any implication of continuing policy.

8.1.3 To avoid confusion, and as a matter of courtesy, members of the House of Representatives who are standing for re-election should continue to be addressed as 'MP' until it is known whether they have been re-elected. Newly-elected members should be addressed as 'MP' as soon as it is known that they are elected. Members who are not standing for re-election should not be addressed as 'MP' following the dissolution of the House of Representatives.

8.1.4 The same rules apply to senators for the Northern Territory and the Australian Capital Territory, except that territory senators who are not standing for re-election should be addressed as 'Senator' until the election day.

8.1.5 The terms of state senators expire and begin on 30 June and 1 July respectively, regardless of the date the election is held. Therefore, state senators who are not standing for re-election should continue to be addressed as 'Senator' until their terms expire.